

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7457

DATE COMPLAINT FILED: 08/02/2018

DATE OF NOTIFICATION: 08/09/2018

LAST RESPONSE RECEIVED: 08/27/2018

DATE ACTIVATED: 11/13/2018

ELECTION CYCLE: 2018

EXPIRATION OF SOL: 07/09/2023 – 07/11/2023

COMPLAINANT:

Kevin Doering; Citizens for Turner

RESPONDENTS:

Theresa Gasper

Theresa Gasper for Congress and Jennifer May in
her official capacity as treasurer

RELEVANT STATUTES

AND REGULATIONS:

52 U.S.C. § 30118(a)

11 C.F.R. § 114.2(b)

11 C.F.R. § 114.4(c)(6)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that congressional candidate Theresa Gasper and her campaign committee, Theresa Gasper for Congress and Jennifer May in her official capacity as treasurer (the "Committee"), knowingly misrepresented in a campaign flyer that five universities endorsed her campaign, in violation of the ban on corporate contributions in the Federal Election Campaign Act of 1971, as amended (the "Act"). As discussed below, we recommend that the Commission find no reason to believe that Respondents violated 52 U.S.C. § 30118(a), and close the file.¹

¹ The Complaint also alleges that actions taken by Respondents could jeopardize the tax-exempt status of the universities, an area of law not within the Commission's jurisdiction.

II. FACTUAL BACKGROUND

Theresa Gasper was the 2018 Democratic nominee in Ohio's 10th Congressional District.² The Committee is the principal campaign committee for her 2018 campaign.³

The Complaint alleges that Gasper knowingly and intentionally misrepresented that her campaign was endorsed by five universities when it created and disseminated a fundraising flyer.⁴ The flyer advertised a "higher education fundraiser in support of" Gasper on July 12, 2018, and identified a "Host Committee," listing the five universities, followed by the names of individuals.⁵ Each of the five universities are registered in Ohio as non-profit corporations⁶ that cannot engage in political activity.⁷

The Complaint alleges that by falsely implying that the five universities had endorsed Gasper's campaign, the Respondents knowingly caused the Committee to receive prohibited in-kind contributions from each university.⁸ The Complaint alleges that at least one of the universities issued a prior warning to the Respondents not to release the flyer, and that four of the five universities ultimately repudiated the implied endorsement.⁹

² See FEC Form 2, Amended Statement of Candidacy, Theresa Gasper (July 4, 2018).

³ See FEC Form 1, Amended Statement of Organization, Theresa Gasper for Congress (July 4, 2018).

⁴ Compl. at 1.

⁵ Compl. at 7.

⁶ See Ohio Secretary of State Business Search, <https://businesssearch.sos.state.oh.us/> (search "University of Dayton," "Wright State University," "Sinclair Community College," "Antioch University" and "Central State University.")

⁷ See 26 U.S.C. § 501(c)(3) (providing tax exemption to a corporation that, among other things, does not participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office).

⁸ Compl. at 4-5.

⁹ *Id.* at 3. The Complaint alleges that such repudiation occurred, for example, by some of the universities issuing cease and desist letters. *Id.*

1 In a joint response, Gasper and the Committee assert that the fourteen individuals on the
2 host committee were identified according to the school where they were employed for purposes
3 of brevity.¹⁰ Respondents assert the flyer was used for approximately 24 hours, and then was
4 replaced with a flyer that did not identify the universities, which Respondents provide in their
5 response.¹¹

6 **III. LEGAL ANALYSIS**

7
8 The Act and Commission regulations define "contribution" as "any gift, subscription,
9 loan, advance, or deposit of money or anything of value made by any person for the purpose of
10 influencing any election for Federal office."¹² "Anything of value" includes all in-kind
11 contributions, defined as the provision of any goods or services without charge or at a charge that
12 is less than the usual and normal charge for such goods or services.¹³

13 Corporations are prohibited from making contributions or expenditures to candidates and
14 their authorized committees.¹⁴ Nonetheless, corporations are permitted to endorse candidates for
15 office under the Act, as long as expenses for the endorsement are *de minimis* and the
16 endorsement is not coordinated with the candidate or the candidate's authorized committee.¹⁵

17 The Committee's fundraising flyer may have been intended to imply that the five
18 universities had endorsed Gasper's campaign, but the record provides no indication that the

¹⁰ Joint Resp. at 2.

¹¹ *Id.* at 2, 5.

¹² 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.").

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

¹⁵ *See* 11 C.F.R. § 114.4(c)(6). *See also* Advisory Op. 1997-16 (Oregon Natural Resources Council) at 4.

1 universities actually endorsed Gasper or that they coordinated with the Committee on the flyer so
2 that a prohibited, in-kind contribution could have occurred due to the implied endorsement in the
3 flyer.¹⁶ Further, the flyer circulated for only 24 hours, after which it was replaced with a new
4 flyer that did not identify the universities, suggesting that any potential value would have been *de*
5 *minimis*.

6 In light of these facts, we recommend that the Commission find no reason to believe that
7 Theresa Gasper and Theresa Gasper for Congress and Jennifer May in her official capacity as
8 treasurer violated 52 U.S.C. § 30118(a), and close the file.

9 **IV. RECOMMENDATIONS**

- 10
11 1. Find no reason to believe that Theresa Gasper and Theresa Gasper for Congress and
12 Jennifer May in her official capacity as treasurer violated 52 U.S.C. § 30118(a);
13
14 2. Approve the attached Factual and Legal Analysis;
15
16 3. Approve the appropriate letters; and

¹⁶ See 11 C.F.R. § 114.4(c)(6).

4. Close the file.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

March 15, 2019

Date

Peter Blumberg by MA
Peter Blumberg
Acting Deputy Associate General Counsel

Mark Allen
Mark Allen
Assistant General Counsel

Attachment

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Theresa Gasper MUR 7457
6 Theresa Gasper for Congress and Jennifer May
7 in her official capacity as treasurer
8

9 **I. INTRODUCTION**

10
11 The Complaint alleges that congressional candidate Theresa Gasper and her campaign
12 committee, Theresa Gasper for Congress and Jennifer May in her official capacity as treasurer
13 (the "Committee"), knowingly misrepresented in a campaign flyer that five universities endorsed
14 her campaign, in violation of the ban on corporate contributions in the Federal Election
15 Campaign Act of 1971, as amended (the "Act"). As discussed below, the Commission finds no
16 reason to believe that Respondents violated 52 U.S.C. § 30118(a).¹

17 **II. FACTUAL BACKGROUND**

18 Theresa Gasper was the 2018 Democratic nominee in Ohio's 10th Congressional
19 District.² The Committee is the principal campaign committee for her 2018 campaign.³

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21 campaign was endorsed by five universities when it created and disseminated a fundraising
22 flyer.⁴ The flyer advertised a "higher education fundraiser in support of" Gasper on July 12,
23 2018, and identified a "Host Committee," listing the five universities, followed by the names of

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2 cannot engage in political activity.⁷

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4 Gasper's campaign, the Respondents knowingly caused the Committee to receive prohibited in-
5 kind contributions from each university.⁸ The Complaint alleges that at least one of the
6 universities issued a prior warning to the Respondents not to release the flyer, and that four of the
7 five universities ultimately repudiated the implied endorsement.⁹

8 In a joint response, Gasper and the Committee assert that the fourteen individuals on the
9 host committee were identified according to the school where they were employed for purposes
10 of brevity.¹⁰ Respondents assert the flyer was used for approximately 24 hours, and then was
11 replaced with a flyer that did not identify the universities, which Respondents provide in their
12 response.¹¹

⁵ Compl. at 7.

⁶ See Ohio Secretary of State Business Search, <https://businesssearch.sos.state.oh.us/> (search "University of Dayton," "Wright State University," "Sinclair Community College," "Antioch University," and "Central State University.")

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12 universities had endorsed Gasper's campaign, but the record provides no indication that the
13 universities actually endorsed Gasper or that they coordinated with the Committee on the flyer so
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- 1 In light of these facts, the Commission finds no reason to believe that Theresa Gasper and
- 2 Theresa Gasper for Congress and Jennifer May in her official capacity as treasurer violated
- 3 52 U.S.C. § 30118(a).

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